

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7825 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1-2 Yes 3 to 5 No
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RC MAHESHWARY

Versus

GUJARAT PUBLIC SERVICE COMMISSION

Appearance:

MR PARESH UPADHYAY for Petitioner
MR RJ OZA for Respondent No. 1
MR DA BAMBHANIA for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/07/98

ORAL JUDGEMENT

Rule.

The petitioner was appointed on compassionate ground in the office of the Gujarat Public Service Commission by order dated 6.9.1983. As per the terms of the appointment he was required to go through regular recruitment procedure i.e. to get through the competitive examination and consequently to pass departmental examination.

2. As the petitioner was not sent for requisite training he made repeated representations asking the authorities to send him for pre-service training. He was sent for pre-service training commencing from 16.11.1992 and he passed the examination on 30.6.1993 in first attempt. On having passed the said examination, respondent G.P.S.C. regularised his services with effect from 30.6.1993 under communication dated 23.7.1993. The petitioner aggrieved of regularisation with effect from 30.6.1993 made a representation and submitted that his services should be regularised from the date of initial appointment i.e. 12.9.1983. The said representation has been rejected under communication dated 15.9.1997.

3. Mr. Paresh Upadhyay, learned counsel for the petitioner, contends that the petitioner is entitled to seniority from the date of his initial appointment i.e. 12.9.1983 on having passed the departmental examination. It is submitted that the petitioner was not sent for pre-service training examination for long time in spite of his repeated requests. As and when the opportunity was given he passed the said examination in the first attempt. In view of this, he cannot be down graded in seniority on account of an act for which he was not responsible. He has further submitted that the petitioner's appointment on compassionate ground must be considered an appointment under the Rules and therefore once an appointment is made according to Rules the seniority has to be computed from the date of initial appointment. In any case even if it is considered that his appointment was not under the Rules still he has continued on the said post uninterruptedly and therefore he is entitled, on passing the departmental examination the seniority from the date of initial appointment. The learned counsel in support of this contention has relied on a decision of the apex court in the case of THE DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION VS. STATE OF MAHARASHTRA reported in AIR 1990 SC 1607. He has also relied on a Division Bench decision of this court in the case of SAFIMIYA G. MALEK & ORS. VS. STATE OF GUJARAT reported in 33(1) G.L.R. 704.

4. On the other hand Mr. Bambhania, learned counsel for the respondent has vehemently contended that the appointment made on compassionate ground cannot be put at par with the appointment after following the procedure provided under the Statutory Rules. He has also submitted that as per the condition of the appointment the petitioner was required to pass the departmental examination. The said condition has not been challenged by the petitioner. In view of this, the petitioner has

been rightly assigned the seniority from the date of passing the pre-service training examination.

5. Mr. Oza, learned counsel appearing for the G.P.S.C. submitted that only after the corrigendum dated 25.11.1991 was issued by the Government deleting condition of appearance of competitive examination, the petitioner was sent for training. G.P.S.C. had initially recommended the petitioner's case to compute seniority from the date of initial appointment. However, as the petitioner's case was rejected, GPSC as well took a decision in light of the decision taken by the State Government.

6. Thus the question arose for consideration is :

"Whether on the facts of the case the petitioner is entitled to seniority from the date of his initial appointment or from the date of passing the departmental examination?"

A Government Notification dated 22.4.1997 has been brought to my notice which provides that compassionate appointees who are not required to be appointed through centralised recruitment in the cadre of clerk, the seniority will be computed from the date of original appointment and not from the date of passing of departmental examination. In fact this Notification is in consonance with the law laid down by the Supreme Court in DIRECT RECRUIT CLASS II ENGG. OFFICER'S ASSOCIATION (supra). It is held in the said case that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Appointment made on compassionate ground cannot be said to be an appointment de hors of the rules. Such appointment cannot also be said to be an appointment on ad hoc basis or as a stop gap. For regularisation of person appointed on compassionate ground the requirement is to pass the departmental examination after undergoing pre-service training and once the said departmental examination is passed the incumbent is entitled to seniority from the date of initial appointment. I cannot agree with the submissions made by Mr. Bambhania that the condition No. 2 provided for passing of departmental examination has not been challenged by the petitioner and so long as the said condition is there, the seniority can be assigned only from the date of passing the examination. In my view the said condition is only for regularisation of the appointment. The said condition has nothing to do with computation of seniority. Another contention that the appointment made on compassionate

ground is not an appointment under statutory rules has also no substance. It is of course true that the appointment made on compassionate ground is not made after following the procedure provided under the Rules of appointment framed under the proviso of Article 309 of the relevant Service Rules. However, once the appointment on compassionate ground has been recognised by the State Government in view of the decisions, of the court, it cannot be said that such appointments are against rules. In fact, by providing the condition of passing the departmental examination the Government has waived the requirement of following the procedure provided under the relevant rules for appointment.

In view of the aforesaid, this Special Civil Application is allowed. The impugned order dated 26.8.1997 passed by the State Government and the order dated 15.9.1997 passed by the G.P.S.C. are quashed and set aside. The petitioner shall be assigned seniority in the cadre of Junior Clerk from the date of his initial appointment i.e. 12.9.1983. Rule is made absolute. No order as to costs.

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